05-1634-cr

To Be Argued By:
JOHN A. DANAHER III

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 05-1634-cr

UNITED STATES OF AMERICA,
Appellee,

-vs-

TONY VAUGHN,
a/k/a BILAL SALAHUDDIN,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

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BRIEF AND APPENDIX
FOR THE UNITED STATES OF AMERICA

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STATEMENT OF JURISDICTION

The district court, the Honorable Ellen Bree Burns, had subject matter jurisdiction under 18 U.S.C. § 3231. The defendant filed a timely notice of appeal pursuant to Fed. R. App. P. 4(b), and this Court has appellate jurisdiction pursuant to 18 U.S.C. § 3742(a).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Whether the district court clearly erred when it enhanced the defendant's sentence (1) because the defendant employed sophisticated means to commit the offense conduct and (2) because the defendant had a supervisory role in the offense.

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

The defendant, Tony Vaughn, pleaded guilty to one count of conspiracy to commit fraud in connection with identification documents, and a second count of possessing a document-making implement. The defendant was sentenced to 48 months of imprisonment, followed by three years of supervised release. On appeal, the

defendant complains that the district court improperly enhanced his offense level under the U.S. Sentencing Guidelines on two bases: (1) that the defendant used sophisticated means to commit the offense, and (2) that the defendant exercised a supervisory role in the offense. As explained below, the facts found by the district court were sufficient to justify both enhancements, and hence there was no clear error. Because the defendant identifies no other purported flaws in his sentencing, the sentence imposed should be affirmed as reasonable.

Statement of the Case

Defendant Tony Vaughn, also known as Bilal Salahuddin,[1] was arrested by a Connecticut State trooper on August 5, 2003. JA at 159. On May 26, 2004, the defendant was indicted on charges of conspiracy to commit fraud in connection with identification documents, fraud and related activity in connection with identification documents, possession of document-making implements, and possession of authentication features. JA at 8. On January 6, 2005, he pleaded guilty to count one of the thirty-five count indictment, charging him with conspiracy to commit fraud in connection with identification documents and information, in violation of 18 U.S.C. §§ 371 and 1028(f). He also pleaded guilty to count three, which charged him with possession of a document-making

[1] At various places throughout the transcripts, JA at 55-153, the defendant was variously referred to as "Vaughn" and "Salahuddin." *E.g.*, Joint Appendix ("JA") at 95. For ease of reference, he will be referred to as "Vaughn" throughout the Government's Brief.

implement, in violation of 18 U.S.C. § 1028(a)(5). JA at 17 (plea agreement).

On March 23, 2005, the defendant was sentenced to 48 months of imprisonment on counts one and three, to run concurrently, three years of supervised release, and a special assessment of $200. JA at 28. On March 30, 2005, the defendant filed a timely notice of appeal. JA at 154.

STATEMENT OF FACTS

A. The Offense Conduct

The defendant, together with a woman named Karrea Collier and a man named Douglas Mays, were stopped by a Connecticut State trooper on August 5, 2003, while they were traveling on an interstate highway in Connecticut. JA at 25, 159. At the time, all three said that they were traveling to Boston to attend a funeral. JA at 159. Douglas Mays, who was also convicted of the fraudulent conduct that was the subject of this case, told the trooper that the funeral was for a man named "David Green." JA at 120. (In the course of the sentencing hearing, in the context of an argument between the parties as to whether the defendant's sentence should be enhanced for having relocated to Connecticut to carry out the offense, the defendant insisted that he flew from Chicago to Connecticut for the purpose of going to a funeral in Boston. JA at 108-09. The court then inquired directly of the defendant, "whose funeral was that?" and the defendant replied, "Brian Wright." *Id.*)

Immediately after the traffic stop, the trooper determined that Vaughn's driver's license, which was in the name of Bilal Salahuddin, had been suspended. Mays acknowledged that his license had been suspended, and Karrea Collier stated that she did not have any identification. The trooper then issued a speeding ticket to Vaughn, issued him a citation for operating a motor vehicle without a license, and directed him to drive off the highway. JA at 159. After the defendant drove the car to a motel parking lot, a motel employee contacted the state police and advised them that an individual who had been in the car had been observed concealing an item from the troopers who had followed the defendant to the motel parking lot. *Id.*

The troopers then returned to the motel and questioned Vaughn, Mays and Collier separately. Troopers recovered a wallet which Mays claimed was his, but the wallet contained an Iowa driver's license in the name of Bilal Salahuddin and bearing a photograph of defendant Vaughn. The wallet also contained an Arizona driver's license in the name of Robert A. Lefko. *Id.* Troopers thereafter determined that Vaughn had used a false Iowa driver's license and a credit card to rent the automobile. *Id.* Troopers then searched Salahuddin's luggage and recovered computer hardware, documents and supplies necessary to make identification cards, a guide on state identification and operator license guidelines, a laptop computer, several floppy disks, compact disks, checkbooks in the name of Shannon D. Walker and Helen N. Long, an Iowa operator's license in the name of Ann Cosby, and an Illinois license in the name of Patricia

Matthews. The latter two items each carried Karrea Collier's photograph. *Id.* at 160.

Collier, in response to questioning by the troopers, admitted that the licenses were hers and that they had been manufactured by Vaughn. The troopers also located, in Vaughn's bags, credit cards in the name of C. Gail Samuels and Shannon D. Walker, several library cards, a health card and a Social Security card containing women's names, and a "Fargo Quatro Electronics, Inc. ID card printer." Troopers subsequently determined that this printer was configured to make identification documents and false identification documents, including high-resolution graphics, text, and bar codes. JA at 25, 160.

On further questioning, Collier admitted that she traveled with Vaughn from Chicago to Hartford on August 3, 2003, and that Vaughn created a false identification for her in the name of Ann Cosby. Collier advised the troopers that Vaughn often made false identification cards and licenses and that she, Vaughn and Mays had engaged in numerous fraud schemes in Chicago. JA at 160-61. She also stated that she and Mays worked under the direct supervision of Vaughn. JA at 160. Later, state troopers recovered more items inside the engine compartment of the rental car, including a Bank of America checkbook, a Harris Bank checkbook, a Bank One checkbook, four Illinois drivers' licenses, two Virginia drivers' licenses, and a Social Security card, as well as a credit card.

At the sentencing hearing, the government advised the court that Mays, in the course of a recorded prison telephone call, discussed the fact that Vaughn had retained

counsel for all three defendants, and that Vaughn paid for those counsel. JA at 125-27. The court also had heard plea colloquies from both Douglas Mays and Karrea Collier which indicated that Collier fell ill when she came to Connecticut and could not fulfill her role of going into stores and writing checks using different identification documents that had been created by Vaughn. Consequently, Mays was summoned to fill that role. JA at 160, 127-28. In addition, Vaughn acknowledged owning the luggage in the motor vehicle that contained the document-making equipment, the laptop computer, many false identification documents and related supplies. JA at 159-60.

B. The Sentencing

At the time of the sentencing on March 23, 2005, the U.S. Sentencing Guidelines Manual (2004) applicable to this defendant provided for a base offense level of 6, pursuant to U.S.S.G. § 2B1.1(a)(2). The offense level was enhanced by two levels because there were more than 10 victims but fewer than 50 victims. U.S.S.G. § 2B1.1(b)(2)(A). There was an additional two-level enhancement, pursuant to U.S.S.G. § 2B1.1(b)(3), because the offense involved a theft from the person of another. Two more levels were added under U.S.S.G. § 2B1.1(b)(4) because the offense involved receiving stolen property and the defendant was a person in the business of receiving and selling stolen property. In addition, two levels were added because the defendant either possessed or used an access-device-making implement, produced unauthorized access devices, unlawfully transferred or used means of identification to produce or obtain any other means of

identification, or possessed five or more means of identification, all pursuant to U.S.S.G. § 2B1.1(b)(10). JA at 162-63; 20-21 (partial guideline stipulation in plea agreement). None of the foregoing enhancements is currently at issue.

Two other potential enhancements were the subject of argument at the sentencing hearing. First, the defendant objected to an increase of two levels on the basis that the fraud involved relocation to another jurisdiction and/or the use of sophisticated means, pursuant to U.S.S.G. § 2B1.1(b)(9)(A) and (C). After argument, the court concluded that the offense involved sophisticated means and did not specifically rule on the question of whether the fraud involved relocation to another jurisdiction. JA at 121-22. The defendant objected to another proposed two-level enhancement based upon the defendant's role as organizer, leader, manager or supervisor of criminal activity that involved two other individuals, pursuant to U.S.S.G. § 3B1.1(c). Again, following argument, the court concluded that the supervisory-role enhancement was appropriate. JA at 128-29.

As a result of the foregoing enhancements, the defendant's offense level totaled 18, from which three offense levels were subtracted due to the defendant's acceptance of responsibility. U.S.S.G. § 3E1.1(a). This resulted in a total offense level of 15.

This defendant used more than two dozen aliases, numerous Social Security numbers, numerous birth dates, and acquired 14 state convictions over the course of 20 years. JA at 163-67. His criminal category of VI,

combined with an offense level of 15, resulted in a guideline imprisonment range of 41 to 51 months.

The court sentenced the defendant to 48 months of imprisonment, to be followed by three years of supervised release, but noted, in the course of the sentencing, that the guidelines were not binding on the court. JA at 147. The court also recognized that a sentencing court is obligated to determine whether it is reasonable to issue a sentence within the guidelines, *id.*, or whether there is a reason to issue a non-guideline sentence. *Id.* The court concluded that it was not necessary for the court to sentence outside the applicable guideline range, finding that, "They seem to me to be appropriate and representative of the conduct that the defendant engaged in." *Id.*

SUMMARY OF ARGUMENT

The district court did not clearly err in concluding that the defendant used sophisticated means to carry out the offense. The record reflects that the defendant traveled to Connecticut with luggage packed with technical equipment and supplies necessary to make extraordinarily convincing forgeries of official identification documents. Nor did the court clearly err in concluding that the defendant was a supervisor of the activities of his co-defendants, Collier and Mays. Not only had the court heard statements directly from Collier and Mays, consistent with that conclusion, but the court also heard evidence that Vaughn had the resources to retain counsel for all three defendants, and noted that Vaughn admitted possessing all of the items used to make false identification documents. Moreover, the court specifically

concluded that a sentence within the guideline range was reasonable and consistent with the defendant's conduct.

ARGUMENT

I. The District Court Did Not Clearly Err When It Enhanced the Defendant's Sentence for Use of Sophisticated Means and for His Supervisory Role in the Offense

A. Relevant Facts

1. Sophisticated Means

At the time of the defendant's guilty plea, he entered into a stipulation of facts in which he acknowledged that he was in possession of identification information belonging to other individuals, some of which had been stolen from the rightful owners. JA at 25. He also acknowledged possessing a "Fargo Quatro Electronics Incorporated ID card printer," a device configured and used to make identification documents and false identification documents, including high-resolution graphics, text and bar codes. *Id.* In the course of the colloquy with the defendant, the court asked him about the document-making device, and the defendant advised the court that it was a "Fargo printer-card printer" and that it was going to be used to produce false identification documents. JA at 63. The court asked the defendant, specifically, if he had used the equipment for that purpose, and the defendant indicated that he had. JA at 63-64. The government advised the court, in the course of that

colloquy, that the laptop computer had been examined by a forensics expert and was found to contain various software programs used to assist in making identification documents, such as Adobe Photoshop and others. The defendant, when queried, declined to challenge any of the foregoing representations. JA at 81-82.

The government presented the court with three exhibits, reproduced as attachments to this brief, that illustrated the defendant's skill in creating fraudulent licenses. Government's Exhibit 1 sets forth a copy of a legitimate license and a fraudulent license, both of which were found in the engine compartment of the vehicle driven by the defendant. The government identified, for the court, the specific features of the fraudulent license that illustrated the various skills necessary to create a fraudulent license. JA at 113-15. Government's Exhibit 2 depicted similar efforts by the defendant. JA at 115-16. The government also proffered one of the methods by which the defendant directed his co-defendant, Karrea Collier, to pose as the person depicted on the fraudulent license. JA at 116. Finally, the government proffered a third example, in Government's Exhibit 3, of both a legitimate license and Vaughn's fraudulent version that further illustrated the sophisticated nature of the scheme. The government also advised the court that this scheme had been carried out in multiple jurisdictions and, based upon a prison conversation with co-defendant Mays, the plan, prior to the arrest in Connecticut, had been to obtain money in Connecticut and then to go to Boston to obtain more money. JA at 111-13, 117.

Having reviewed the government's exhibits and heard argument, the court concluded that the items that were found and used to facilitate the offense "suggest certainly that this was a sophisticated endeavor." JA at 121. The court concluded that the equipment which the defendant had in his car "certainly suggest it was a sophisticated operation." *Id.* The court noted that the computer software, which included state seals that could be used on various licenses, software programs for photo manipulation, an electronic pad used to forge signatures and digitize the signatures in order to store them in a computer, as well as guides on state identification and operator license guidelines for the various states, together with the electronic card printer, all suggested a sophisticated operation. JA at 121-22.

2. Role in the Offense

When the defendant was arrested, he was operating a car that he had rented when he came to Connecticut from Chicago. JA at 159. All of the items used to make false identification documents, including operator license guidelines, a laptop computer, two checkbooks in the names of two women and drivers' licenses in the name of Ann Cosby and Patricia Matthews, but bearing the photograph of Karrea Collier, a co-defendant, were found in the defendant's luggage. JA at 159-60. Collier admitted, at the time of the arrest, that the defendant had manufactured the licenses. JA at 160. The search of the defendant's luggage also revealed two credit cards in the names of two women, library cards, and a health card and Social Security card in the names of other women. JA at 160.

The government introduced evidence, resulting from a prison conversation involving co-defendant Douglas Mays, which indicated that defendant Vaughn had retained counsel for all three defendants. JA at 125-26. The government also represented to the court that both Mays and Collier, in their plea colloquies, had described how Collier had become ill when she traveled with the defendant in order to operate a fraud scheme with the defendant, and so the defendant contacted Mays to come as a replacement for Collier, which Mays did. JA at 127-28.

After considering all of the evidence, the court found that the defendant was in control of the equipment used to foster the conspiracy, that Collier was a drug addict who was not in a position to make decisions, and that the coordinator of the venture and the one who was directing it was the defendant. For those reasons, the court enhanced the defendant's offense level by two points. JA at 128-29.

B. Governing Law and Standard of Review

In *United States v. Booker*, 125 S. Ct. 738 (2005), the Supreme Court held that the Sentencing Reform Act of 1984 was unconstitutional to the extent it mandated that district courts impose sentences in conformity with the United States Sentencing Guidelines, which entail judicial factfinding by a preponderance of the evidence. In order to remedy this constitutional infirmity, the Supreme Court excised certain portions of the federal sentencing statutes which rendered the Guidelines mandatory, namely 18 U.S.C. §§ 3553(b)(1) and 3742(e). Henceforth, the Court

said, sentencing courts should still consider the range applicable to a particular defendant under the Guidelines, but treat that range as advisory rather than binding.

The Supreme Court recognized in *Booker* that by excising § 3742(e), it had eliminated the statutory provision which had set forth the standard of appellate review for sentencing decisions. The Court nevertheless determined that implicit in the remaining sentencing scheme was a requirement that appellate courts review sentences for "reasonableness" in light of the factors outlined in 18 U.S.C. § 3553(a). *See Booker*, 125 S. Ct. at 765. This Court has explained that "reasonableness" in the context of review of sentences is a flexible concept. *See United States v. Fleming*, 397 F.3d 95, 100 (2d Cir. 2005). The "appellate function in this context should exhibit restraint, not micro-management." *Id.*

When reviewing a sentence for reasonableness, the length of the sentence imposed is one of several considerations. *See United States v. Crosby*, 397 F.3d 103, 114 (2d Cir. 2005). Procedural errors may also render a sentence unreasonable -- for example, application of the Guidelines in a mandatory manner, *Crosby*, 397 F.3d at 114. Likewise, the improper calculation of a sentencing guideline enhancement may also render a sentence unreasonable, at least where that enhancement had an "appreciable influence" on the sentence imposed by the district court. *See United States v. Rubenstein*, 403 F.3d 93, 98-99 (2d Cir. 2005) (vacating and remanding pre-*Booker* sentence, and reviewing enhancement determinations because such decisions "may have an appreciable influence even under the discretionary

sentencing regime that will govern the resentencing"; "express[ing] no opinion as to whether an incorrectly calculated Guidelines sentence could nonetheless be reasonable"), *pet'n for cert. filed*, 74 U.S.L.W. 3091 (July 27, 2005). *United States v. Selioutsky*, 409 F.3d 114, 119 (2d Cir. 2005) ("An error in determining the applicable Guideline range" may render ultimate sentence unreasonable under *Booker*). In some circumstances, a district court need not always resolve every close guidelines question definitively. For example, such a determination is not required "where either of two Guidelines ranges, whether or not adjacent, is applicable, but the sentencing judge, having complied with section 3553(a), makes a decision to impose a non-Guidelines sentence, regardless of which of the two ranges applies." *Crosby*. 397 F.3d at 112. Nevertheless, "even under the discretionary regime recognized in Booker . . . a significant error in the calculation or construction of the Guidelines may preclude affirmance." *United States v. Canova*, 412 F.3d 331, 335 (2d Cir. 2005).

This Court gives "due deference" to the district court's application of the Guidelines to the facts of the case. *United States v. Jackson*, 346 F.3d 22, 24 (2d Cir. 2003), *vacated on other grounds sub nom. Lauersen v. United States,* 125 S.Ct. 1109 (2005). What is meant by "due deference" depends on the nature of the question presented. *Koon v. United States*, 518 U.S. 81, 98 (1996); *United States v. Vasquez*, 389 F.3d 65, 68 (2d Cir. 2004). When a sentencing court's application of a guideline to facts primarily involves an issue of fact, the district court's determination will be reviewed under the clearly erroneous standard. *Vasquez*, 389 F.3d at 75; *Selioutsky*, 409 F.3d at

119; *United States v. Garcia,* 413 F.3d 201, 222 (2d Cir. 2005). To reject a finding of fact as "clearly erroneous," this Court must, "upon review of the entire record," be "left with the definite and firm conviction that a mistake has been committed." *Id.* If the question is primarily an issue of law, then *de novo* review is warranted. *Id*.

As the defendant acknowledges, the district court need only find facts to support sentencing findings by a preponderance of the evidence. *See Garcia*, 413 F.3d at 223 (re-affirming preponderance standard in wake of *Booker*, and reviewing sentencing enhancement under § 3B1.1(c)); *United States v. Beverly*, 5 F.3d 633, 642 (2d Cir. 1993). The court further may draw reasonable inferences from circumstantial evidence. *United States v. Jones*, 900 F.2d 512, 521 (2d Cir. 1990). The court is entitled to rely on any type of information known to it. *United States v. Concepcion*, 983 F.2d 369, 388 (2d Cir. 1992).

1. Sophisticated Means

The guidelines section at issue, § 2B1.1(b)(9), provides for a two-level enhancement on any of three alternative bases:

> If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means . . . .

Application Note 8(B) defines "sophisticated means" as means that are

> *especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense.* For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.[2]

U.S.S.G. § 2B1.1, app. note 8(B) (emphasis added).

The defendant disputes the district court's finding that the electronic equipment used by the defendant, and the level of skill necessary to use that equipment, constituted sophisticated conduct. Defendant's Brief ("Def. Br.") at

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[2] The government introduced evidence that the defendant had relocated from Chicago in order to carry out the scheme. The district court did not expressly reject that argument, stating "even if one were to conclude that there was some doubt about the movement here, the relocation, in my view, the items which were found that were used to facilitate this offense suggest certainly that this was a sophisticated endeavor." JA at 121. Even if this Court were to conclude that the "sophisticated means" enhancement is inapplicable, the district court should have an opportunity, on remand, to make any appropriate findings on the question of whether the defendant relocated to Connecticut for the purpose of carrying out a fraud scheme.

7-8. The defendant argues that the defendant's conduct was "simplistic," Def. Br. at 7, and that the "average American family" owns much of the equipment used by the defendant, concluding that the equipment is not "sophisticated." Def. Br. at 8. Since the defendant appears to be attacking the district court's factual conclusions regarding the nature of the equipment used to carry out the crime, and whether "sophisticated" skills were needed to use the equipment, the defendant is essentially challenging the district court's factual conclusions. Consequently, this Court should review the district court's findings under the "clearly erroneous" standard. *Vasquez*, 389 F.3d at 75.

2. Role in the Offense

The applicable guidelines section, § 3B1.1(c), provides that "[i]f the defendant was an organizer, leader, manager, or supervisor in any criminal activity . . . increase by 2 levels." The background to the application notes makes clear that this enhancement exists because those who exercised a supervisory role tend to profit more from the crime and present a greater danger to the public and/or are more likely to recidivate. That section also states that the distinction between a manager or supervisor in a small criminal enterprise is of less significance than in a larger enterprise, since small enterprises are not as likely to have clearly delineated divisions of responsibility. "This is reflected in the inclusiveness of Section 3B1.1(c)." U.S.S.G. § 3B1.1, background note.

This Court has found that a defendant will qualify for the leadership role enhancement if he managed or

supervised even one participant. *United States v. Burgos*, 324 F.3d 88, 92 (2d Cir. 2003) (citing *United States v. Payne*, 63 F.3d 1200, 1212 (2d Cir. 1995)). This Court has held, further, that a defendant is a manager or supervisor if he exercised "some degree of control over others involved in the commission of the offense . . . or play[ed] a significant role in the decision to recruit or to supervise lower-level participants." *United States v. Blount*, 291 F.3d 201, 217 (2d Cir. 2002) (quoting *Ellerby v. United States*, 187 F.3d 257, 259 (2d Cir. 1998)).

On this issue the defendant disagrees with the district court's conclusion that the defendant engaged in any conduct that reflects supervisory or leadership responsibility. Def. Br. at 9. In support of his position the defendant relies principally on his own statements and arguments set forth at the sentencing hearing. *See* Def. Br. at 9-12. The defendant is therefore challenging the district court's factual conclusions regarding the relative roles of Vaughn, Mays and Collier. Consequently, this Court should, as with the first issue, review the district court's findings under the "clearly erroneous" standard. *See Garcia*, 413 F.3d at 223 (reviewing § 3B1.1(c) enhancement for clear error); *Vasquez*, 389 F.3d at 75 (holding that sentencing determinations are reviewable for clear error where they involve primarily factual findings).

C. Discussion

1. Sophisticated Means

The defendant contends that the procedure of creating false identifications is "quite simplistic . . . ." Def. Br. at

7. The defendant argued that the average American family owns a digital camera, a computer and color printer and various types of software, concluding that the defendant did not possess "sophisticated equipment." Def. Br. at 8. Yet, the equipment the defendant possessed, and admitted using, is far beyond what would normally be found in the home. That equipment included a "Fargo Quatro Electronics Incorporated ID card printer" and an electronic pad used for digitizing an individual's signature and storing it in a computer, of the type used in retail establishments. JA at 44, 114-15, 160. Further, the Fargo Quatro printer was capable of adding bar codes to false identification documents. *Id.* Moreover, as the district court noted, and as the exhibits attached to this brief show, the defendant possessed equipment necessary not only to make fraudulent Illinois licenses, but to make licenses from other states, as well. JA at 121-22.

This case is a far cry from a simple identity theft scheme in which, for example, an individual steals someone's wallet and then attempts to use that information to order credit cards in the name of the victim. The case also involved more than simple possession of a single device used to make fake identification documents. Instead, the defendant's scheme involved multiple stages of criminal activity, all of which were coordinated over time in order to effectuate the criminal goal of obtaining money. Not only did the defendant and his confederates obtain personal information about victims (including those whose original licenses are reproduced in the appendix to this brief), but he then used his technical skills and computerized equipment to replicate official driver's licenses which contained the victim's personal identifying

information, together with a photograph and revised information that corresponded to the physical characteristics of his confederate. The defendant also possessed background documentation on the characteristics of state-issued identification documents from around the United States, which enabled him to produce forged licenses that were both varied and realistic. As the defendant's co-conspirator reported, the goal of producing these forgeries would be to then obtain money and goods using these falsified documents. JA at 160 (statements of Collier).

Since this case involved extensive travel by the defendant, the transportation of a significant amount of sophisticated document-making equipment, demonstrated expertise in using the equipment, and evidence that he had engaged in significant research in the field of making false documentation, this defendant demonstrated greater planning than in a routine identity theft case, justifying the conclusion that sophisticated means were employed. *See Jackson*, 346 F.3d at 24. In fact, the facts of this case resemble those in *United States v. Harvey*, 413 F.3d 850, 853 (8th Cir. 2005), in which the Eighth Circuit upheld the district court's imposition of a sophisticated-means enhancement in a similar identity-theft scheme. As in the present case, the *Harvey* defendants constantly obtained new identification documents, travelled from state to state to obtain identification cards, and used computer technology to generate realistic-looking false documents (in that case, checks) in order to fraudulently obtain funds. The *Harvey* defendants placed a mix of real data (such as the stolen victim's identity, and valid bank routing numbers) and false data (fictitious bank account numbers)

on accurately formatted, computer-generated forgeries so that they could steal money while evading detection. Likewise, the defendant here placed a mix of real data (the victim's name and identifying information) and false data (the photograph and physical characteristics of a confederate) on accurately formatted, computer generated forgeries to steal money. As in *Harvey*, the government asks this Court to conclude that the district court did not clearly err in concluding that, viewing the defendant's conduct as a whole, the defendant engaged in offense conduct that was sufficiently "sophisticated" to warrant a two-level enhancement under U.S.S.G. § 2B1.1(b)(9).

2. Role in the Offense

The defendant raises what is essentially a factual challenge to the district court's determination that he had a supervisory role in the offense. Specifically, the defendant contends that all three defendants were equal partners and that Mays, for example, stole licenses and identification cards and brought them to Vaughn who merely "was proficient with the computer." Def. Br. at 9. Similarly, the defendant contended at sentencing that co-defendant Collier used the cards to go to stores and, unilaterally, open lines of credit. JA at 123. In support of these two claims minimizing the defendant's role in the offense, however, the defendant cites only the arguments of counsel at sentencing -- arguments that are presumably based on information from his client. JA at 122-23.

The court was not required to accept the defendant's version of the offense at face value, in light of the contrary evidence that was also before it. As the defendant

acknowledges, the government obtained information, through an intercepted conversation of Mays, that Vaughn had retained counsel for all three defendants. JA at 125-25. This fact, alone, suggests that Vaughn possessed resources significantly superior to those of his co-defendants, and that he played a coordinating role.

The defendant argues, further, that there is no evidence that Vaughn profited to a greater degree than the other conspirators. Def. Br. at 10. Even if true, however, that would not detract from the evidence before the court that he directly supervised Collier and Mays, JA 160 (reporting statement of Collier) -- evidence that on its own is sufficient to impose a role enhancement. *See United States v. Amico*, 416 F.3d 163, 170 (2d Cir. 2005) (upholding role enhancement where defendant "supervised [co-conspirator], who pleaded guilty to bank larceny, and directed her in carrying out the fraudulent transactions").

Moreover, the district court had heard from co-defendant Collier during her plea allocution that after Collier became ill and was unable to fulfill her role in the scheme, it was defendant Vaughn who contacted Douglas Mays who then, in response to that contact, came to Connecticut to replace defendant Collier. Although the defendant challenged this statement through counsel, alleging that Mays came to Connecticut "on his own accord," JA at 128, the district court was entitled to credit Collier and Mays over the conflicting statement by the defendant. The court was particularly entitled to discredit the defendant's version of events, given his long history of criminal dishonesty. The defendant acknowledged that he had been engaged in theft since he was 13 years of age.

JA at 96. This defendant has used numerous aliases, Social Security numbers, and birth dates throughout his life. JA at 183-84. The defendant's arrest record, covering four full pages of the Presentence Investigation Report, JA at 164-68, reflects a lifetime of duplicity and disregard for the law. The district court was not required to accept the defendant's representations. Moreover, the defendant did not object to the district court's consideration of his co-defendants' statements, either when they were arrested or when they pleaded guilty. Nor did he argue that an evidentiary hearing was required. A sentencing court is entitled to consider all types of evidence, with "[n]o limitation," about a defendant's conduct. 18 U.S.C. § 3661; *United States v. Watts*, 519 U.S. 148, 150 (1997) (per curiam). The PSR in the present case put the defendant on notice that, at a minimum, Collier's statements upon her arrest would be used against him, JA at 160, and he did not seek an evidentiary hearing to dispute those statements. *See United States v. Pimental*, 932 F.2d 1029, 1032 (2d Cir. 1991) (holding that use of statements from co-defendants' trial was permissible at sentencing, where defendant had notice of such statements from inclusion in his PSR); *United States v. Coonce*, 961 F.2d 1268, 1281 (7th Cir. 1992) (affirming sentence imposed based in in part on statements from others' guilty plea hearings, absent objection by defendant).

The district court also relied on the fact that the defendant was obviously in control of the equipment used to advance the scheme, whereas defendant Collier was a drug addict who was not in a position to make decisions. JA at 128-29. The court correctly concluded that the "coordinator of this venture and the one who was directing

it was Mr. Salahuddin." *Id.* The findings by the district court are not clearly erroneous and should be sustained. *See Vasquez*, 389 F.3d at 75; *Selioutsky*, 409 F.3d at 119; *Garcia,* 413 F.3d at 222. The court correctly concluded that Vaughn played a significant role in the decision to bring Mays to Connecticut and that he had supervisory responsibility over Collier, at least. *See Amico*, 416 F.3d at 170; *Blount*, 291 F.3d at 217. As such, a role enhancement was clearly warranted.

3. The Defendant Raises No Other Challenge to the Reasonableness of His Sentence

The defendant raises no other challenge to the reasonableness of his sentence, nor could he, based on the district court's careful evaluation of the record. In the course of issuing the sentence of 48 months, which was within the applicable guideline range of 41 to 51 months, the district court recognized that the guidelines are no longer mandatory, but that the court was obligated to consider them and to determine whether it was reasonable to issue a sentence within the guidelines, or alternatively, whether there was a basis for the issuance of a non-guideline sentence. JA at 146-47. The court concluded that it was not necessary to issue a non-guideline sentence since, the court stated, "they seem to me to be appropriate and representative of the conduct that the defendant engaged in." JA at 147. The court supported its sentence by concluding that the defendant had a lengthy criminal history, including 13 prior convictions. The court found that the defendant is an economic threat to the community and is a threat in an area that is especially problematic to

the public. The court referred, as well, to the seriousness of identity theft. JA at 146. The district court's sentence reflected the court's familiarity with the record, its review of the Presentence Report and its impression of the defendant over the entirety of the proceedings, including the defendant's statements made in open court. From that perspective, it is appropriate to conclude that the sentence, in this case, was a reasonable one. *See Fleming*, 397 F.3d at 100. The government accordingly asks this Court to conclude that the sentence, which was within the applicable sentencing range, is reasonable.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Dated: September 21, 2005

Respectfully submitted,

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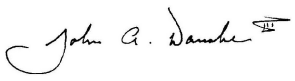

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ADDENDUM OF SENTENCING GUIDELINES

U.S.S.G. § 2B1.1(b)(9) (2004)

> If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

Application Notes:

8. *Sophisticated Means Enhancement under Subsection (b)(9)*.--

. . . .

(B) *Sophisticated Means Enhancement*.--For purposes of subsection (b)(9)(C), "sophisticated means" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.

U.S.S.G. § 3B1.1. Aggravating Role (2004)

Based on the defendant's role in the offense, increase the offense level as follows:

(a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.

(b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels.

(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by 2 levels.

. . . .

Background: This section provides a range of adjustments to increase the offense level based upon the size of a criminal organization (i.e., the number of participants in the offense) and the degree to which the defendant was responsible for committing the offense. This adjustment is included primarily because of concerns about relative responsibility. However, it is also likely that persons who exercise a supervisory or managerial role in the commission of an offense tend to profit more from it and present a greater danger to the public and/or are more likely to recidivate. The Commission's intent is that this adjustment should increase with both the size of the organization and the degree of the defendant's responsibility.

In relatively small criminal enterprises that are not otherwise to be considered as extensive in scope or in planning or preparation, the distinction between organization and leadership, and that of management or supervision, is of less significance than in larger enterprises that tend to have clearly delineated divisions of responsibility. This is reflected in the inclusiveness of §3B1.1(c).

GOVERNMENT'S APPENDIX